

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-22-1214

Appellee

Trial Court No. CR0202102887

v.

Kenneth Townsend

DECISION AND JUDGMENT

Appellant

Decided: July 28, 2023

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney,
and Lorrie J. Rendle and Angela M. Zavac, Assistant
Prosecuting Attorneys, for appellee.

Laurel A. Kendall, for appellant.

* * * * *

DUHART, P.J.

{¶ 1} Appellant, Kenneth Townsend, appeals the August 19, 2022 judgment of the Lucas County Court of Common Pleas, sentencing him to an aggregate prison term of 72 months. Because the state concedes error under 6th Dist.Loc.App.R. 10(H), and we agree that the imposition of the costs of confinement and supervision are improper, we vacate that portion of the judgment. We affirm the remainder of the judgment.

Background

{¶ 2} On November 23, 2021, appellant was indicted by the Lucas County Grand Jury for two counts of aggravated vehicular assault, in violation of R.C. 2903.08(A)(1)(a) and (B), which are felonies in the third degree (Counts 1 and 2). Appellant was also charged with operating a motor vehicle while under the influence of alcohol, a drug of abuse, or a combination of them in violation of R.C. 4511.19(A)(1)(a), (G)(1)(d), and (G)(1)(d)(i), a felony in the fourth degree (Count 3).

{¶ 3} On June 30, 2022, appellant pleaded no contest to one count of aggravated vehicular assault, as well as to the count of operating a motor vehicle while under the influence of alcohol and was found guilty of both counts. The second count of aggravated vehicular assault was to be nollied at sentencing.

{¶ 4} On August 18, 2022, a sentencing hearing was held pursuant to R.C. 2929.19. Appellant was sentenced to a mandatory prison term of 54 months for the aggravated vehicular assault charge. Appellant was also sentenced to 18 months for the charge of operating a motor vehicle while under the influence of alcohol, of which 60 of those days were mandatory.

{¶ 5} At the hearing, the court stated “[t]he Court has considered your present and future ability to pay and after considering all relevant factors pursuant to 2941.51(D) finds that you do have or may reasonably be expected to have the means to pay for all or part of the applicable court costs and your (sic) therefore ordered to pay the applicable costs of prosecution.” The court did not order appellant to pay the costs of supervision

and confinement at the hearing. However, in its August 19, 2022 sentencing entry, the court found appellant “to have, or reasonably may be expected to have, the means to pay all or part of the applicable costs of supervision, confinement, and prosecution as authorized by law.” The court then ordered appellant to “reimburse the State of Ohio and Lucas County for such costs.”

{¶ 6} Additionally, the court imposed a mandatory fine of \$2,500 and a \$10 moving violation fine for Count 3. The court also imposed a mandatory five year license suspension for Count 1 and a lifetime license suspension for Count 3.

{¶ 7} This appeal followed the trial court’s judgment.

Assignment of Error

{¶ 8} Appellant raises the following assignment of error:

The court improperly assigned costs of confinement and supervision without substantive regard to appellant’s ability to pay.

Standard of Review

{¶ 9} “Our standard of review is whether the imposition of costs was contrary to law.” *State v. Velesquez*, 6th Dist. Lucas No. L-22-1167, 2023-Ohio-1100, ¶ 6, quoting *State v. Ivey*, 6th Dist. Lucas No. L-19-1243, 2021-Ohio-2138, ¶ 7.

Law

I. Costs

{¶ 10} Under R.C. 2947.23(A)(1)(a), the imposition of prosecution costs are mandatory, and the trial court is required to impose these “without consideration of whether the defendant has the ability to pay such costs.” *State v. Mathis*, 6th Dist. Lucas No. L-17-1230, 2018-Ohio-4541, ¶ 18. However, the costs of confinement and supervision are discretionary and in order to impose them, the court is required to “find that the defendant has, or will have, the ability to pay.” *State v. Johnson*, 6th Dist. Lucas No. L-16-1165, 2017-Ohio-8206, ¶ 24. Although a formal hearing is not required, Ohio law provides that the record must contain some evidence that the trial court considered the defendant’s present and future ability to pay the costs of confinement and supervision. *See id.* Such evidence could include the defendant’s age, health, employment history, and education. *State v. Stovall*, 6th Dist. Lucas No. L-18-1048, 2019-Ohio-4287, ¶ 37. When the record lacks such evidence, the imposition of these costs are considered to be improper and should be vacated. *Id.*

II. The trial court erred when it imposed costs of confinement and supervision without considering appellant’s future or present ability to pay

{¶ 11} Appellant does not contest the trial court’s imposition of the costs of prosecution. However, appellant does object to the imposition of the costs of confinement and supervision. In addition, the state has conceded that the imposition of the costs of confinement and supervision was error. We agree that the record does not

sufficiently show that the trial court considered appellant's present and future ability to pay the costs of confinement and supervision, and thus, the award of those costs was erroneous.

{¶ 12} Consequently, the assignment of error is well taken.

Conclusion

{¶ 13} For the foregoing reasons, we vacate the portion of the August 19, 2022 judgment assigning the costs of confinement and supervision to the appellant. The remainder of the judgment is affirmed. Pursuant to App.R. 24, the state is hereby ordered to pay the costs incurred on appeal.

Judgment affirmed, in part,
and vacated, in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J.

JUDGE

Christine E. Mayle, J.

JUDGE

Myron C. Duhart, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.</p>
